

RECEIVED

JUL 28 1994

DOCKET FILE COPY ORIGINAL

NEW YORK, NEW YORK

DENVER, COLORADO

ARNOLD & PORTER

1200 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036-6885

(202) 872-6700

CABLE: "ARFOPO"

FACSIMILE: (202) 872-6720

TELEX: 89-2733

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
LOS ANGELES, CALIFORNIA

TOKYO, JAPAN

BRUCE A. HENoch

DIRECT LINE: (202) 728-2148

July 28, 1994

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Rate Regulation
MM Docket No. 92-266

Dear Mr. Caton:

Please find attached on behalf of the Office of the Commissioner of Baseball an original and eleven copies of the Reply Comments of the Officer of the Commissioner of Baseball in the above-referenced proceeding.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,



Bruce A. Henoch

Attachment

No. of Copies rec'd
List ABCDE

2411

RECEIVED

JUL 28 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Sections
of the Cable Television
Consumer Protection and
Competition Act of 1992

Rate Regulation

MM Docket No. 92-266

TO: The Commission

**REPLY COMMENTS OF THE
OFFICE OF THE COMMISSIONER OF BASEBALL**

The Office of the Commissioner of Baseball
("Baseball") submits these reply comments in response to
the Fifth Notice of Proposed Rulemaking in the
above-captioned proceeding.¹

I. INTRODUCTION

The Commission has solicited comments on whether it
should establish rules governing rates for regulated cable
service provided to commercial establishments. The
Commission asked whether higher rates for commercial
establishments should be offset by lower rates to other
subscribers. Virtually all of the parties that filed

¹ In re Implementation of Sections of the Cable Television
Consumer Protection and Competition Act of 1992, Rate
Regulation: Second Order on Reconsideration, Fourth Report
and Order and Fifth Notice of Proposed Rulemaking, MM
Docket No. 92-266, 59 Fed. Reg. 18064 (1994).

comments strongly opposed the Commission's proposals to regulate rates for commercial establishments.² The National Hockey League ("NHL"), for example, stated that regulation of commercial rates would bestow an unjustified windfall on owners of sports bars and other establishments at the expense of sports teams and cable programmers, and that such treatment is not justified by either the Cable Act or Commission precedent.³ Baseball files these reply comments to join the NHL and other parties in urging the Commission not to subject cable rates for commercial establishments to regulation.

II. DISCUSSION

Baseball consists of 26 U.S. teams (and 2 Canadian teams), all of which have local over-the-air broadcast contracts, and 21 of which have contracts with cable regional sports networks ("RSNs"), most of which are carried on the basic tier or programming service tier of local cable systems and are thus subject to regulation

² See, e.g., comments of Continental Cablevision, Inc., et al., filed on June 29, 1994; comments of Cablevision Systems Corp., filed June 29, 1994; joint comments of Providence Journal Co., et al., filed June 29, 1994; comments of Tele-Communications, Inc., filed June 29, 1994; comments of Rainbow Programming Holdings, Inc., filed June 29, 1994; comments of the National Cable Television Association, filed June 29, 1994; and comments of Affiliated Regional Communications, Ltd, filed June 29, 1994.

³ Comments of the National Hockey League in MM Docket No. 92-266, filed June 29, 1994.

under the 1992 Cable Act. Baseball also has a national contract with ESPN, a basic or programming service tier cable channel, for coverage of approximately 75 games. Sports bars and other commercial establishments subscribe to cable television primarily because of the sports programming -- such as baseball -- that is available on the channels carried on the basic and programming service tiers. Sports bars use the availability of such programming to attract customers, and in turn derive substantial revenues from the sale of food and drink to such customers. Thus, sports bars and other commercial establishments use sports programming as a vehicle for earning profits, unlike residential subscribers, who subscribe to cable for private viewing purposes only. As the NHL described in its comments, subjecting commercial rates to regulation would have the unnecessary and unjustified effect of giving profit-making establishments a subsidy and financial windfall.⁴ Such windfall would be first at the expense of cable operators, but would necessarily harm sports programmers and, ultimately, providers of sports programming such as baseball. Thus, should commercial rates be regulated, individual baseball teams, which sell telecasting rights to regional cable

⁴ NHL comments at 3.

operators, will suffer reduced rights fees while sports bar operators enjoy higher profits.

There is no justifiable reason for such a financial shift. As was amply demonstrated by many of the commenting parties, contracts between cable operators and the owners of commercial establishments are most often negotiated individually.⁵ When dealing with commercial establishments, cable operators face a good deal of competition from other multichannel video distributors such as DBS, SMATV, MMDS and home satellite dishes, and are therefore already constrained by the market in the rates they can charge. No sports bar owner will pay more money for cable service if the same programming is available from another source for less money.

Further, as was demonstrated by the NHL and other commenters, there is nothing in the text or legislative history of the 1992 Act to suggest that Congress intended that residential and commercial subscribers be charged the same rates, or even that rates for commercial subscribers should be regulated at all.⁶ The Act and legislative history, as well as Commission orders implementing the Act, consistently refer to subscribers in terms of "households," "dwellings," and "homes." It would be a strained

⁵ See, e.g., comments of Time Warner Cable, filed June 29, 1994, at 37.

⁶ See, e.g., NHL comments at 3; NCTA comments at 15.

interpretation indeed to include sports bars and other commercial establishments within the definitions of such terms.

III. CONCLUSION

For the reasons discussed, Baseball supports the NHL and other commenting parties in urging the Commission to continue allowing the market to regulate rates for cable service provided to commercial establishments.

Respectfully submitted,


Thomas J. Ostertag
General Counsel

Office of the Commissioner of Baseball
350 Park Avenue, 17th Floor
New York, New York 10022
(212) 339-7800

Dated: July 28, 1994